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No. 98-184

In the

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

v.

SANDRA HOUGHTON,

Respondent.

On Writ of Certiorari
To the Wyoming Supreme Court

BRIEF OF THE STATES OF KENTUCKY, ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, CONNECTICUT, DELAWARE, GEORGIA, HAWAII, IDAHO, IOWA, LOUISIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, UTAH, AND THE TERRITORY OF GUAM AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to conduct a warrantless search of a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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INTEREST OF THE AMICI CURIAE

Amicus Commonwealth of Kentucky and 30 other *amici* States, Commonwealths and Territories write in support of the Petitioner, State of Wyoming, urging the Court to reverse the decision of the Wyoming Supreme Court. In *United States v. Ross*, 456 U.S. 798 (1982), the Court announced a single, straightforward, and easily applied rule governing the scope of car searches under the *Carroll v. United States*, 267 U.S. 132 (1925), "automobile exception" to the warrant requirement. The decision below qualified *Ross* with additional rules that not only create improper hurdles to society's interest in enforcing its laws, but are confusing and difficult for police officers and jurists to apply.

The proper scope of warrantless car searches is an issue of great concern to *amici* because "countless vehicles are stopped on highways and public streets everyday, and [the Court's] cases demonstrate that it is not uncommon for police officers to have probable cause to believe that contraband may be found in a stopped vehicle." *Ross*, 456 U.S. at 803-04. Because state and local law enforcement officers in the field, and state and local courts sitting in review of those officers, bear the greater part of the burden of making proper scope determinations in car searches, the *amici* join together in asking the Court to reaffirm without further qualification the clear, coherent rule announced in *Ross*.

SUMMARY OF ARGUMENT

I. Below, the Wyoming Supreme Court held that the search of a passenger's (Houghton's) purse was beyond the scope of a legitimate warrantless car search based on probable cause to believe that the driver had concealed contraband in the car.

That decision contradicts this Court's holding in *United States v. Ross*, 456 U.S. 798, 825 (1982), that, "[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." Because it is undisputed that the traffic stop was lawful and that the police had probable cause to believe that contraband was concealed in the car, and because Houghton's purse was capable of containing the sought-after contraband, the decision below should be reversed.

The lower court's concern that Houghton was not suspected of concealing contraband in the car is misplaced because, under the Fourth Amendment, property may be searched based on the reasonable belief that it contains evidence of crime regardless of whether its owner is suspected of criminal involvement. *See Zurcher v. Stanford Daily*, 436 U.S. 547 (1978). And, in *New York v. Belton*, 453 U.S. 454, 460 (1981), this Court recognized the principle that a car occupant can conceal evidence of crime virtually anywhere in the car. The lower court's belief that Houghton's purse is entitled to special protections as a "worthy" personal belonging is equally misplaced. The two principal cases it relied upon are readily distinguishable as involving searches of persons, not personal belongings, and as involving searches that did not occur in or around a car. Moreover, *Ross* itself rejected any notion that personal belongings are "worthy" of more protections than other containers during car searches.

II. The new rule created by the Wyoming Supreme Court is subject to fraud and abuse, is difficult to apply, and is anomalous in comparison to the rule governing the scope of car searches incident to arrest. The rule invites persons who wish to transport contraband in cars to conceal it in the personal

belongings of other occupants of the car, thereby frustrating its detection by police even where police have probable cause to believe that contraband is concealed in the vehicle. Also, the rule requires often difficult distinctions to be drawn between suspect and non-suspect occupants and between containers that may be searched and those that may not. This would inevitably lead to confusion in law enforcement and to inconsistent judicial decisions. Finally, the rule is incongruous in comparison to *Belton's* rule governing the scope of car searches incident to arrest, which includes all containers in the passenger compartment.

ARGUMENT

I. THIS COURT MADE CLEAR IN *UNITED STATES v. ROSS* AND *CALIFORNIA v. ACEVEDO* THAT, WHEN POLICE HAVE PROBABLE CAUSE TO BELIEVE THAT CONTRABAND IS IN AN AUTOMOBILE, THEY MAY SEARCH ALL CONTAINERS IN THE VEHICLE CAPABLE OF CONCEALING THE CONTRABAND

In *United States v. Ross*, 456 U.S. 798, 825 (1982), this Court held that the scope of a search under the automobile exception to the warrant requirement properly includes "every part of the vehicle and its contents that may conceal the object of the search." Refusing to subject the search of a car and a search of the contents of the same car to independent Fourth Amendment scrutiny, the Court imposed only the common-sense requirement that the scope of the car search be limited to the car's parts and contents "that might contain the object of the search." *Id.* at 821. In this case, because it is undisputed that the car search fell within the automobile exception to the

warrant requirement and the purse containing the confiscated drugs and paraphernalia was capable of concealing the object of the search, *Ross* dictates reversal. In holding that the search of Houghton's purse was beyond the legitimate scope of the car search, the Wyoming Supreme Court improperly imposed additional scope limitations not allowed by *Ross*.

1. In *Ross*, the police initiated a warrantless car search based on probable cause to believe that the driver of the car was selling narcotics from the vehicle. During the initial search of the car, police found narcotics in a paper bag located in the trunk. 456 U.S. at 800-01. The Court held that the search of the paper bag was reasonable under the Fourth Amendment because the car search was legitimate at its inception under the automobile exception, and because the paper bag was capable of concealing the object of the search. The Court reasoned that "[c]ontraband goods rarely are strewn across the trunk or floor of a car," but usually are "enclosed within some form of container," and concluded that the value of the automobile exception announced in *Carroll v. United States*, 267 U.S. 132 (1925), would be "largely nullified if the permissible scope of a warrantless search of an automobile did not include containers and packages found inside the vehicle." *Ross*, 456 U.S. at 820.

Subsequently, in *California v. Acevedo*, 500 U.S. 565, 570-73 (1991), the Court confirmed that the automobile exception encompasses both automobiles and the containers within them, and thus "the privacy interest in those closed containers yield[s] to the broad scope of an automobile search." *Id.* at 572. *Acevedo* reaffirmed *Ross*' rejection of any "distinction between containers and cars" that would require independent justification to search a container within a car over and above that required to search the car. *Id.* at 573. Thus, the only

relevant question for determining whether a container found in a car is within the scope of a legitimate search of the car is whether the container was such that it "may [have] conceal[ed] the object of the search." *Ross*, 456 U.S. at 825.

The search of Houghton's purse readily meets that test. It is undisputed that the police had probable cause to believe that the owner, and driver, of a car had concealed contraband somewhere in the car; that the police were therefore justified in searching the car under the automobile exception to the warrant requirement; and that Houghton's purse was found within the car and was capable of concealing the sought-after drugs. (Pet. App. 4, 6). This is the end of the Fourth Amendment inquiry under *Ross* and *Acevedo*.

2. The Wyoming Supreme Court, however, qualified *Ross* with a rule excluding containers from the scope of a car search under the automobile exception when the police know or should know that the container is the personal belonging of a non-suspect occupant and when the suspect occupant had no opportunity to conceal contraband in the belonging immediately before or during the police investigation. (Pet. App. 21-22). Applying that rule, the court held that the search of Houghton's purse violated the Fourth Amendment. (*Id.*) This qualification of *Ross* is improper because neither its "non-suspect occupant" component nor its "personal belongings" component vindicate relevant Fourth Amendment concerns.

To the extent the Wyoming Supreme Court was concerned by the absence of probable cause to suspect Houghton of criminal activity at the time of the search, its concern was misplaced. The scope of a warrantless car search based on probable cause hinges not on whether the owner of a container

found in the car is reasonably suspected of crime, but rather only on whether the container "may conceal the object of the search." *Ross*, 456 U.S. at 825. The principle that property not owned by a person reasonably suspected of criminal activity might nevertheless fall within the scope of a lawful search was not freshly minted in *Ross*. To the contrary, in *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978), the Court criticized the contention that a legitimate search under the Fourth Amendment is restricted to places and property owned or possessed by persons suspected of criminal involvement. Instead, *Zurcher* clarified that reasonable cause to believe the object of the search may be found on the searched property is the critical element of Fourth Amendment reasonableness, not suspicions regarding the property owner's culpability. *Id.* at 553-56; *cf. Maryland v. Wilson*, 519 U.S. 408 (1997) (recognizing that a non-suspect passenger may be seized by police).

Likewise, in *New York v. Belton*, 453 U.S. 454, 460 (1981), this Court recognized a bright-line rule that containers "inside the relatively narrow compass of the passenger compartment of an automobile" are within the control of all the car's occupants. In *Belton,* the Court held that any container found within the passenger compartment of a car was within the scope of a vehicle search initiated incident to lawful arrest, in part because of law enforcement's legitimate need to prevent the destruction of evidence concealed in the car within the reach of the arrestee. *Id.* This rationale itself is based on the implicit understanding that the arrestee could have secreted evidence of crime virtually anywhere in the car. The implicit understanding regarding the possible locations of evidence of crime within the car applies with equal force, if not more, when the searches are initiated

based on probable cause to believe contraband is concealed in the car.

In this case, the driver (Young) might have concealed illegal drugs anywhere in the car. We know this based on reasonable understandings about the physical arrangements of occupants and containers within cars, the social relationships of traveling companions, and the incentives a person like Young has to conceal contraband in the belongings of a non-suspect occupant like Houghton. As a rule then, the police's knowledge that a particular container found in a car is owned by a non-suspect occupant in no way renders the container incapable of concealing drugs hidden by a suspect occupant.

The Wyoming Supreme Court also erred to the extent that it relied on special concerns for the privacy of personal belongings to justify providing Houghton's purse with heightened constitutional protections. The court's reliance on *Ybarra v. Illinois*, 444 U.S. 85 (1979), and *United States v. Di Re*, 332 U.S. 581 (1948), for the principle that personal belongings are entitled to heightened constitutional protections in car searches was misplaced. In *Ybarra*, the Court invalidated the search of a bar patron's person pursuant to a warrant to search the bar. 444 U.S. at 87-89. In *Di Re*, the Court invalidated a station house search of a person. 332 U.S. at 582-83. These cases are easily distinguished from this case because both involved the search of a person, not a search of personal belongings, and because both involved searches that did not occur in or around a car. *See Acevedo*, 500 U.S. at 578 ("From *Carroll* through *Ross*, this Court has explained that automobile searches differ from other searches.").

Moreover, in *Ross* the Court thoroughly rejected the idea that the scope of a car search might depend on whether a container in the car was "worthy" like a purse or "unworthy" like a paper bag. 456 U.S. at 822 (citing plurality and dissenting opinions in *Robbins v. California*, 453 U.S. 420 (1981)). The Court emphatically stated that "[t]he scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted," and held that the Fourth Amendment protection provided to all containers regardless of their nature gives way equally when a container might contain the object of the search. *Id.* at 824. Thus, Houghton's purse cannot escape the broad scope of the car search in this case on the ground that it was a personal belonging.

II. THE RULE ANNOUNCED BELOW IS SUBJECT TO FRAUD AND ABUSE, IS DIFFICULT TO APPLY, AND IS ANOMALOUS IN COMPARISON TO THE SCOPE OF CAR SEARCHES INCIDENT TO ARREST

The Wyoming Supreme Court crafted a new rule excluding a non-suspect occupant's personal effects from a car search based on probable cause, which itself is subject to exception when police have no notice that an effect is owned by a non-suspect occupant or when a suspect occupant had an opportunity to conceal contraband in the personal effects of a non-suspect occupant immediately prior to or during the police investigation. (Pet. App. 15-18). Not only does the court's "non-suspect occupant's belongings" rule transgress *Ross* and general Fourth Amendment principles, it creates a host of practical difficulties and anomalies.

A. The Wyoming Supreme Court's Rule is Subject to Fraud and Abuse

The rule devised by the Wyoming Supreme Court, if adopted by this Court, would create a search-free zone within cars that would undoubtedly be abused by persons seeking to illegally transport contraband in automobiles. It is easy to envision such a person intentionally concealing illegal drugs in the belongings of a passenger, rather than in a compartment of the car or in his own effects. As a consequence, even in cases in which the police develop probable cause to believe that person has concealed contraband in the vehicle, the contraband would be immune from detection, unless the police also develop probable cause specific to the passenger, which will not always be possible. Conversely, non-suspect passengers could themselves frustrate the detection of contraband in containers otherwise within the scope of the car search by falsely claiming ownership of the container.

The Wyoming Supreme Court recognized the problem of fraud and abuse in its decision and sought to remedy the problem by allowing police to search a non-suspect occupant's belongings when a suspect occupant had an opportunity to conceal contraband in those belongings immediately prior to or during the police investigation. (Pet. App. 18). This approach, however, fails to solve the fraud and abuse problem because it merely encourages a lawbreaker to conceal contraband in the personal effects of a non-suspect passenger at an earlier time, rather than waiting to do so at the beginning or in the midst of a lawful traffic stop. Accordingly, despite the Wyoming court's attempted remedy, its rule still creates a significant loophole.

B. The Wyoming Supreme Court's Rule is Difficult to Apply

Under the court below's rule, police and courts must not only draw the straightforward and simple distinctions required by *Ross*, but in any particular case must also make several additional determinations: which occupants they reasonably believe have concealed contraband in the car, which personal effects in the car belong to non-suspect occupants, and whether the suspect had the opportunity to conceal contraband in the non-suspect's effects immediately prior to or during the investigation. By increasing the number of outcome determinative decisions police and courts will have to make in numerous cases, the court below has moved away from the ideal of setting "a single familiar standard," *Dunaway v. New York*, 442 U.S. 200, 213 (1979), that provides "clear and unequivocal guidelines to the law enforcement profession," *Acevedo*, 500 U.S. at 577 (quotation omitted). The court neglected the practical difficulties that police in the field will have drawing additional lines or that courts will have in reviewing the lines they draw.

While in many cases determining which occupants in the car may reasonably be suspected of having concealed contraband in the vehicle will prove relatively simple, in other cases the line between suspect and non-suspect occupants will be more difficult to draw. For example, in this case, had Young not told Officer Baldwin that he used the hypodermic syringe that was protruding from his shirt pocket to take drugs, but rather had said that "we" used it, would Officer Baldwin have had probable cause to believe that all the occupants were complicit in transporting drugs in the car? Under *Ross*, the answer to the

question would not change the legitimate scope of the search; under the Wyoming Supreme Court's rule it would.

Even when the police can readily distinguish between suspect and non-suspect occupants, they will also have the difficult task of determining which containers capable of concealing the object of the search belong to non-suspects. The Wyoming court attempted to solve that dilemma by allowing police to presume that all containers in the car are within the scope of the car search, unless they have or should have knowledge to the contrary. (Pet. App. 15-16). This "notice" solution ultimately fails because it offers no coherent, workable definition as to what constitutes sufficient notice to police that a container belongs to a non-suspect occupant. None of the possibilities are enticing. Tying police knowledge to the occupants' claims about ownership is rife with danger, as is illustrated by the initial dishonesty exhibited by Houghton in this case.[1] Likewise, tying police knowledge of a container's ownership to its appearance would generally be pointless,

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[1] Initially, Houghton gave police a false name "in case things went bad," and it was only after the police had found her driver's license in the purse that she acknowledged that she owned it. (Pet. 3). This demonstrates the danger of relying on the honesty of the car's occupants to ascertain ownership of personal belongings capable of concealing the object of the search. It also illustrates that the decision below actually turned on a fortuity. Had the police discovered drugs in Houghton's purse before the driver's license, and not the other way around, they would not have had notice that the purse belonged to a then non-suspect occupant of the car. That the Wyoming Supreme Court's rule might turn on fortuities makes it "perverse." *United States v. Chadwick*, 433 U.S. 1, 22 (1977) (Blackmun, J., dissenting).

except in the unusual case that all the containers in the vehicle have labels identifying their owners.[2]

And even when the police can neatly divide the car's occupants into suspects and non-suspects, and are likewise able to match all the containers within to their true owners, the task of conducting the car search consistent with these determinations will often be practically difficult. In cases involving several occupants, each one having several personal effects in the car, an officer might easily become confused and inadvertently search a container previously identified as belonging to a non-suspect occupant or fail to search a container presumed within the scope of the car search.

The Wyoming Supreme Court created still more practical problems by making an exception when the suspect occupant "had the opportunity to conceal the contraband within the personal effects of the [non-suspect occupant] immediately prior to" the police investigation. Questions abound. Will it be sufficient that a suspect had the opportunity even if the officer did not see any action showing that the suspect concealed the contraband? What is "immediately"? What if the car does not promptly pull over when the officers put their lights on? This is one more tough judgment call that an officer – and the courts – will have to make.

By adding several extra determinations to the *Ross* rule, the court below has significantly complicated the equation for law enforcement officers. If adopted as the law of the land, the new

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[2] Even when the appearance of a container gives substantial clues about its owner, the clues will not be sufficient. For instance, in this case, had all the occupants of the car been men, what inferences should Officer Baldwin have drawn upon finding a "lady's purse?" (Pet. App. 17).

rule would engender a higher volume of Fourth Amendment litigation and would likely lead to inconsistent results in the lower courts, as reasonable jurists would differ in their resolutions of the close questions that would certainly arise.

C. The Wyoming Supreme Court's Rule Is Anomalous

The final problem with the rule created by the court below is that it is anomalous in comparison to the rule governing the scope of car searches incident to arrest. In *New York v. Belton*, 453 U.S. at 460, the Court held that, when an officer makes a lawful custodial arrest of a motor vehicle occupant, he may contemporaneously search the passenger compartment of the vehicle, including any containers found therein. Thus, had the car search in this case been initiated incident to Young's arrest, Houghton's purse would have been within the scope of the search.

That outcome makes little sense given that, although the rationales of the two types of car search are not identical, both attempt to protect against evidence being moved or destroyed. One of the principal rationales supporting car searches incident to arrest is that, at the time of his arrest, the arrestee might reach into the car and gain possession of destructible evidence. *Belton*, 453 U.S. at 460. Similarly, car searches based on probable cause are designed to prevent the loss or further concealment of evidence of crime. *Ross*, 456 U.S. at 806-07. The scope of a car search based on probable cause should, therefore, be no less than that of a car search incident to arrest. Indeed, it would be incongruous that in a *Belton* search, even though the police might have no reason to believe that contraband is concealed in a car, a purse found on the back seat of the car would fall within the scope of the search, but in a car

search entirely justified by probable cause to believe that contraband is hidden in the car, the same purse could not be searched. The rule below and *Belton* cannot coherently coexist.

CONCLUSION

The judgment of the Wyoming Supreme Court should be reversed.

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